

Application No. 09/557,196
Amendment "B" dated December 22, 2003
Reply to Office Action mailed September 24, 2003

REMARKS

The latest Office Action, dated September 24, 2003, considered and rejected claims 1-14 under 35 U.S.C. §103(a), as being unpatentable over Kurtz (U.S. Patent No. 5,574,440) in view of Houser (U.S. Patent No. 5,774,859) and further in view of Brooks (U.S. Patent No. 5,826,166).¹ By this paper new dependent claims 15-17 have been added, such that claims 1-17 now remain pending following this paper. Of the pending claims, claims 1, 5 and 8 are the independent claims at issue.

Claim 1 is directed to a method for using a central management device to tune to channels that are requested by a user for display on a display device. The method includes receiving user input at the central device selecting a channel to be tuned to. It is then determined, from electronic programming guide data stored at the central device, whether the signal is scrambled or not. If the signal is scrambled, it is routed from the central device to a descrambler where it is descrambled and tuned for display. If the signal is not scrambled, a tuner internal to the central device is used to tune the channel for display.

Claim 5 is directed to a corresponding computer program product for implementing the method of claim 1. Claim 8 is directed to a correspondingly similar apparatus for implementing the method of claim 1.

Initially, with regard to this Amendment, which is submitted after Final, Applicant respectfully submits that this amendment should be entered in the record after the Final Rejection because it is believed that the clarifications made by this amendment place the application in condition for allowance without raising new issues. Furthermore, it is believed that the Final Office Action was premature inasmuch as the Examiner dismissed arguments made by Applicant on the grounds that certain elements were not recited in the claims, even though they actually were. In particular, Examiner states in the Final Office Action that "As to point (A), in response to applicant's argument that the prior art fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., in the Amendment, 'using an internal tuner located at the central device for tuning into descrambled channels' (page 6, lines 15-16 are

¹ Although the prior art status of Kurtz, Houser and Brooks is not being challenged at this time, Applicant reserves the right to challenge the purported prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments made herein with regard to Kurtz, Houser and Brooks are only made assuming, *arguendo*, that these references qualify as actual prior art. Accordingly, the arguments made herein should not, therefore, be construed as acquiescing to any prior art status of the cited references.

Application No. 09/557,196
Amendment "B" dated December 22, 2003
Reply to Office Action mailed September 24, 2003

not recited in the rejected claims(s)."² It should be noted, however, that this is not correct. In particular, the last element recited in claims 1 and 5 clearly recites a step for "using an internal tuner that is located at the central device to tune to one or more channels of the non-scrambled signal for display on the display device." Claim 8 also includes a similar limitation.

Accordingly, inasmuch as the grounds for the Final Rejection are based at least in part on the Examiner's failure to give full weight and consideration to all of the elements recited in the claims, and the arguments made with regard to these elements in Amendment A, and because new issues are not being raised that alter the scope of the independent claims, Applicant respectfully submits that this amendment should be received and entered in record even though it is now being filed after the issuance of a Final Office.

Now, with regard to the 103(a) rejections for obviousness, the Final Office Action suggests that Kurtz discloses the step for determining at the central device whether a signal is scrambled or non-scrambled. This, however, is not true. In particular, although the analogized Kurtz switching apparatus comprises a switch for switching between two inputs (e.g., premium source A and non-premium source B)³ in which LED lights can be used to indicate the presence/utilization of an input received from one of the input sources (Green for Source A) and (Red for Source B),⁴ this in no way suggests the switch is actually performing a step for determining whether the input comprises a scrambled or a descrambled channel. Instead, this merely reflects how the switch is configured to identify which input source is actually being utilized. And, even then, the LEDs in Kurtz still do not definitively reflect whether the signals are scrambled or not. In particular, Kurtz states the illumination of a green LED "indicates the presence of source 'A' signals at the TV's input, which *may* represent non-premium cable signals." (Col. 17, ll. 29-31. Emphasis added). Likewise, the illumination of a red LED

² (Page 6 of the Final OA). This claim element was also specifically referred to in a previous interview, as noted in the interview summary, which was prepared by the Examiner. With particular regard to the Interview Summary, it should also be pointed out that Applicant does not agree with the recitation that "Applicant admitted that Kurt reference reads on claim one except the last limitation." In particular, although Applicant does agree with the later statement that "the last limitation in claim one distinguishes between applicant's invention and prior art," Applicant would like to reiterate that this is only one reason for which Applicant's invention is distinguished from the prior art. Accordingly, it is the combination of recited elements, rather than a single element, that distinguishes the pending claims from the art of record.

³ Switching enables the user to utilize the features of a television receiver or VCR when the signal source being utilized is the non-premium source B. (Col. 3, ll. 15-18; Col. 3, ln. 40 thru Col. 4, ln. 12; Col. 4, ll. 59-63; Col. 5, ll. 57-61).

⁴ Col. 17, ln. 16 thru col. 18, ln. 7.

Application No. 00/557,196
Amendment "B" dated December 22, 2003
Reply to Office Action mailed September 24, 2003

"indicates the presence of source 'B' signals at the TV input, which may represent the premium output of a converter box." (Col. 17, ll. 50-54. Emphasis added). Accordingly, even though the LEDs can reflect the presence of a signal source, it is not even definitive whether the signal received over the signal source is scrambled or not. One reason for this is because of the configuration of the input sources. In particular, a splitter splits the signal from the original source, such that it is still possible for scrambled signals to be received over the non-premium source A input. (see Col. 5, ll. 57-61; Col. 3, ll. 50-62; Col. 2, ln. 37 – Col. 3, ln. 11).

Even assuming, *arguendo*, that Kurtz's LEDs could be construed in some manner to indicate that an actual determination was made at the central device, as to whether an input signal is scrambled or not, Kurtz's switching apparatus 10 clearly fails to disclose that electronic programming guide information is used to determine whether a channel is scrambled, let alone electronic programming guide information stored at the central device, as recited in the claims.

Kurtz also fails to disclose that scrambled signals are routed to a descrambler from the central device (e.g., analogized switching apparatus), to be descrambled and tuned, upon determining that the signal is scrambled. Although Kurtz makes some references to output connectors that apparently connect to a cable converter from the switching apparatus, this disclosure is not clear and actually appears to be somewhat contradictory, and does not support the assumption that Kurtz routes signals determined to be scrambled to the cable box.⁵

Additionally, Kurtz also fails to disclose that upon determining that the signals are not scrambled, tuning the signals directly at the central device, as recited in the claims. To the contrary, Kurtz discloses that the received signals are merely routed at the switching apparatus to the corresponding TV or VCR to utilize their functionality. (Col. 3, ll. 55-61; Col. 4, ll. 7-12). There is nothing in Kurtz to suggest that the tuning actually occurs within the switching apparatus.

In the latest Action, the Examiner cites Brooks for the proposition that tuning can occur at a centralized device. In particular, the Examiner suggests that a NIM (network interface

⁵ In lines 27-33 of Col. 5, Kurtz identifies two connectors (22 and 23) which are both described as input to a converter box. Initially, this does not appear to be correct that they would both be input to a cable box. Furthermore, this disclosure also appears to be in conflict with Figure 2 and the corresponding disclosure in which Kurtz only describes input being received from the cable converter, rather than sending output to the cable converter (Id. at ll. 58-61). A statement was made in the last amendment suggesting that Kurtz infers incoming signals from an input source could be routed to a descrambler through the switch. This, however, does not mean that Kurtz teaches signals are routed to a descrambler only upon determining they are scrambled, as recited in the claims. In fact, Kurtz provides no disclosure that would even suggest this.

Application No. 09/557,196
Amendment "B" dated December 22, 2003
Reply to Office Action mailed September 24, 2003

module) can provide such tuning. The NIM is described in Brooks as providing an interface between a network and a DIT (digital entertainment terminal). (Col. 7, ll. 33-38). Although the NIM can be configured with a tuner (Fig. 5, 43-45), to tune to channels, there is no motivation to combine the teachings of Brooks with Kurtz. In particular, Kurtz is directed to switching a signal output from between two inputs. There is nothing in Kurtz or Brooks to provide any motivation for tuning to channels at the switch, rather than merely routing them to a TV and VCR. In fact, to the contrary, Kurtz implies the opposite, teaching that one desired attribute of the invention is to "utilize the inherent features which may be provided with the recorder or receiver." (Col. 4, ll. 8-10)

The Examiner also suggests that a teaching in Houser regarding the use of an electronic programming guide (EPG) reads on the claimed invention in combination with Kurtz. This, however, is also not true. In particular, Houser discloses the use of an EPG for recognizing speech commands, which is plainly different than utilizing an EPG to determine whether a signal is scrambled or not. (Col. 2, ln. 19 – Col. 4, ln.43). Furthermore, Houser discloses that the EPG is stored at a remotely located scrambler, rather than at a central device that determines whether a signal is scrambled or not. (Col. 22, ll. 64-66; Col. 23, ll. 10-11; Figure 2B (item 130)).

Additionally, even assuming, *arguendo*, that Houser did disclose use of EPG data stored at a central device to determine whether a signal is scrambled, which it doesn't, there would be no motivation to combine such a teaching with Kurtz. In particular, Kurtz teaches that the LEDs are illuminated to reflect which input signal is being transmitted from the switch, so as to indicate to the users whether they have the "freedom to utilize the inherent features" of the TV and VCR. Such freedom is determined where the input is received from, not whether the signal is scrambled or not.⁶ Accordingly, it would do no good for Kurtz to actually determine whether a signal is scrambled or not, it merely needs to indicate to the user which input signal is being used, so the user knows whether they have freedom to utilize the functionality of the TV and VCR.

Applicant also suggests that the new dependent claims 15-17 further clarify and distinguish the invention from the cited art. In particular, these new dependent claims clarify

⁶ The entire background section is helpful to clarify this point. See also Col. 3, ln. 67-Col. 4, ln.12. ("To aid the user in being cognizant of the source status then present for either or both the television receiver or the video recorder, visual indicators of that status are provided with the apparatus....")

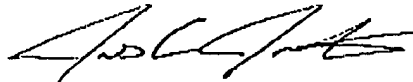
Application No. 09/557,196
Amendment "A" dated December 22, 2003
Reply to Office Action mailed September 24, 2003

that the input over which both the scrambled and non-scrambled signals are received is the same input. This feature, which is supported by Figures 4-8 and corresponding disclosure, even further distinguishes from at least the Kurtz reference.

For at least the forgoing reasons, Applicant respectfully submits that the pending claims, 1-17 are in condition for allowance. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23 day of December, 2003.

Respectfully submitted,



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